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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,967	10/15/2004	Carl Sidonius Maria Andela	254781USOPCT	3397

22850 7590 05/10/2007  
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
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MONDESI, ROBERT B

ART UNIT	PAPER NUMBER
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1652

NOTIFICATION DATE	DELIVERY MODE
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05/10/2007

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
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## Office Action Summary

**Application No.**

10/500,967

**Applicant(s)**

ANDELA ET AL.

**Examiner**

Robert B. Mondesi

**Art Unit**

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 21-32 is/are pending in the application.
- 4a) Of the above claim(s) 1-13, 15, 16 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

Applicants' election of Invention II, Claims 14 and 17, and the further election of a fat like substance or wax like substance and phytase in response to the restriction requirement mailed January 5, 2007 is acknowledged. Because applicants did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Therefore the requirement is still deemed proper and is made FINAL.

### ***Status of the claims***

**Claims 19-20** have been canceled. **Claims 21-32** have been added. **Claims 1-18 and 21-32** are pending. **Claims 1-13, 15-16, 18 and 26-31** are withdrawn for pertaining to nonelected subject matter. **Claims 14, 17, 21-25 and 32** are presently under examination.

### ***Priority***

The current application filed on October 15, 2004 is a 371 of PCT/EP03/00341 filed on 01/14/2003, which in turn claims priority to foreign application, EUROPEAN PATENT OFFICE (EPO) 0205017.0 filed on 01/15/2002. A certified copy of foreign document (EPO) 0205017.0 has been provided.

### ***Preliminary Amendment***

The preliminary amendment filed July 8, 2004 has been entered.

### ***Information Disclosure Statement***

The IDS filed July 8, 2004 and October 5, 2004 have been received and are signed and considered, a copy of the PTO 1449 is attached to the following document;

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however specific documents, ISL-method 61696 and 61731 have not been considered because applicants have not provided a date for the said documents.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 14, 17, 21-25 and 32** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In **claim 14** applicants have stated that the enzyme containing granulate coated with dispersion particles consists essentially of a hydrophobic substance; however it is not clear how an enzyme containing substance consists essentially of only a hydrophobic substance and not also the enzyme.

**Claims 17, 21-25 and 32** are dependent claims that do not overcome the deficiencies of the independent claim that they are dependent therefrom.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 14, 17, 21-22, 25 and 32** are rejected under 35 U.S.C. 102(e) as being anticipated by Fuglsang et al., US Patent Publication No. 2002/0094367.

**Claim 14** and its dependent **claims 17, 21-22, 25 and 32** are product by process claims; "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

Fuglsang et al. disclose an enzyme containing granulate coated with a hydrophobic substance, wherein the hydrophobic substance is a hydrophobic fat (page 1, paragraph 0002, lines 2-3; page 2, paragraph 0030, lines 2-3; page 7, paragraph 0124 through paragraph 0127), wherein the particles have a size ranging from 10-1000nm (page 5, paragraph 0093), wherein the melting point is between 40 and 200 C° (page 5, paragraph 0090, specifically lines 10-17) and wherein the enzyme is phytase (page 4, paragraph 0061, line 3).

Thus Fuglsang et al. teach all the elements of **claims 14, 17, 21-22, 25 and 32** and these claims are anticipated under 35 USC 102(e).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 14 and 23-24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuglsang et al., US Patent Publication No. 2002/0094367 in view of WO 97/16076 (cited in the IDS filed July 8, 2004).

Fuglsang et al. teach an enzyme containing granulate as mentioned above.

Fuglsang et al. do not teach that the hydrophobic substance is applied 0.1%-20% or that the hydrophobic dispersion contains 10 to 60% (w/w) hydrophobic substance.

WO 97/16076 teaches that the hydrophobic substance is applied 0.1%-20% or that the hydrophobic dispersion contains 10 to 60% (w/w) hydrophobic substance (page 4, lines 7-20 and 26-35).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare an enzyme containing granulate coated with a hydrophobic substance wherein for the hydrophobic substance is applied 0.1%-20% or that the hydrophobic dispersion contains 10 to 60% (w/w) hydrophobic substance (page

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4, lines 7-20 and 26-35) for the advantages enhanced retention of enzymatic activity as taught by Fuglsang et al. and WO 97/16076, see WO 97/16076 at page 3, lines 33-37.

**Conclusion**

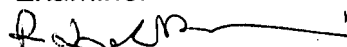
No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Mondesi whose telephone number is 571-272-0956. The examiner can normally be reached on 9am-5pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapu Achutamurthy can be reached on 571-272-0928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Robert B Mondesi  
Examiner

  
5-7-2007